

E9QZCHAF

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA, New York, N.Y.

5 v. 13 CR 290 (PAC)

6 CHRISTINA CHAI and HI JONG  
7 LEE,

8 Defendants.  
9 -----x

10 Before: September 26, 2014  
11 HON. PAUL A. CROTTY,  
12 District Judge  
13

14 APPEARANCES

15 PREET BHARARA  
16 United States Attorney for the  
17 Southern District of New York  
18 BY: ELISHA KOBRE  
19 DANIEL TEHRANI  
20 Assistant United States Attorneys

21 BRAFMAN & ASSOCIATES, P.C.  
22 Attorneys for Defendant Chai  
23 BY: MARC A. AGNIFILO  
24 JACOB KAPLAN

25 SERCARZ & RIOPELLE  
26 Attorneys for Defendant Lee  
27 BY: ROLAND G. RIOPELLE  
28 GIULIANA GRAHAM

29 Also Present: Robert Polimeno, DEA  
30 Nicholas Evert, Paralegal  
31 ARIEN GREENE-PINTO, Korean Interpreter  
32 KYCONG SILK SONG, Korean Interpreter

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1 (In open court; jury not present)

2 THE COURT: Let's go on the record.

3 We had several phone calls this morning from juror  
4 number five, Mr. Pascetta. His mother-in-law is in emergency  
5 and dire situation with cancer, and she's been hospitalized.  
6 His father-in-law has Parkinson's disease and is not capable of  
7 caring for himself in his wife's absence.

8 This situation with Mr. Pascetta is -- which exists as  
9 of last night and will continue for some period of time, he's  
10 not sure that his mother-in-law is going to make it through her  
11 hospital stay, and then there will be funeral arrangements.

12 So Mr. Pascetta is, I think, subject to what you tell  
13 me, I think I have to excuse him.

14 I would then propose to proceed, unless you consent  
15 under Rule 23, to proceed with a jury of 11 because I think  
16 there's good cause.

17 Now, that's what my proposal is. I want to hear from  
18 the government and from defense counsel.

19 MR. TEHRANI: Your Honor, without having done a lot of  
20 research on this, the good cause framework I would think would  
21 take into account the availability of alternate jurors. So I  
22 don't know how that plays in, and whether it's always improper  
23 to proceed with 11 jurors if there is an alternate available.  
24 But, you know, I think what the government --

25 THE COURT: I'm relying on 23(b)(3), which provides,

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1 "After the jury has retired to deliberate" -- which it has --  
2 the Court may permit a jury of 11 persons to return a verdict  
3 even without a stipulation by the parties," because you can't  
4 stipulate to a jury of less than 12, not 11, maybe even ten or  
5 eight, but some number that's agreeable to all sides. "Court  
6 may permit a jury of 11 persons to return a verdict even  
7 without a stipulation by the parties if the Court finds good  
8 cause to excuse a juror."

9 I believe there's good cause to excuse the juror.

10 MR. KOBRE: I think that's right, your Honor. You  
11 know, I think what the government would propose, however, is  
12 that the jury proceed with -- I guess there is a couple  
13 options; one is with an alternate today, and if it doesn't --  
14 if there is no verdict today, then with a new alternate on  
15 Monday; or we proceed with two alternates on Monday and,  
16 unfortunately, lose today for deliberations.

17 Given that we've impaneled these alternates who are  
18 available to deliberate in this case, you know, I don't think  
19 defense counsel is going to agree that it's appropriate to  
20 proceed with 11 jurors.

21 The government would, therefore, propose that we  
22 continue again either today with an alternate and then another  
23 alternate on Monday, or just on Monday with two new alternates.

24 THE COURT: Who wants to go for defense first. Mr.  
25 Agnifilo.

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1                   MR. AGNIFILO: Yes, Judge. It is our strong  
2 preference to have a jury of 12. I mean, that's obviously the  
3 norm, and is only not the norm for what I consider dramatic  
4 circumstances.

5                   We do have the alternates. The alternates sat through  
6 the two weeks of trial. We picked the alternates for, among  
7 other reasons, this potential reason.

8                   But I have a couple of questions and I'm somewhat  
9 handicapped because there's certain information that I don't  
10 have, but I'm gathering your Honor might know the answer to  
11 this.

12                  If juror -- it wasn't clear to me that juror number  
13 five was saying that he can't be here. I thought today -- the  
14 only problem could be today. If the only problem for juror  
15 number five was today, my proposal would be we do not -- and I  
16 want a resolution as efficiently as anybody else. But there  
17 are --

18                  THE COURT: Well, let me interrupt you right now.

19                  MR. AGNIFILO: Yes, Judge. Yes, Judge.

20                  THE COURT: Juror number five is not available today.

21                  MR. AGNIFILO: Right.

22                  THE COURT: And we asked him that question, is he  
23 going to be available next week, and his answer was no, he was  
24 not going to be available next week.

25                  MR. AGNIFILO: I see. Okay. All right.

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1                   THE COURT: So I mean that's what he said.

2                   MR. AGNIFILO: Yes, all right.

3                   MR. RIOPELLE: So we're losing five.

4                   MR. AGNIFILO: Okay, all right. It's good now that  
5 I'm clear on that.

6                   THE COURT: I'm sorry if I wasn't clear before.

7                   MR. AGNIFILO: No, no. I think I was assuming  
8 something that -- there's reasons people shouldn't assume and I  
9 assumed.

10                  I think it's my -- so my preference is to use the  
11 alternates.

12                  Now, the thing that I would want to talk to Mr.  
13 Riopelle and my client a little bit more about is, if we  
14 stagger the introduction of the alternates or whether we just  
15 have them both come on Monday. And having them both come on  
16 Monday could be less disruptive.

17                  MR. RIOPELLE: You have to -- I would suggest you have  
18 to do it that way, your Honor, given the circumstances of the  
19 case. Because the law requires -- and I too am in favor of  
20 seating the alternates, and we're going to lose number four on  
21 Monday. I would suggest the most efficient procedure now,  
22 given that number five will not be available for the remaining  
23 period of the trial, is to adjourn for the day, seat the two  
24 alternates on Monday.

25                  THE COURT: What if the two alternates are not

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1 available?

2 MR. RIOPELLE: Well, then we'll have to revisit the  
3 issue, and we're either going to have to stipulate to a jury of  
4 ten or declare a mistrial. Or if there is one alternate  
5 available, you'll force us to go ahead with 11.

6 THE COURT: Declaration of a mistrial is not something  
7 I want to do.

8 MR. RIOPELLE: I understand.

9 THE COURT: Because it leaves us with a very serious  
10 question of double jeopardy; was it really for good cause?

11 MR. RIOPELLE: Well, I don't -- I think that running  
12 out of the jurors is a manifest necessity for a mistrial. I  
13 obviously will make my double jeopardy motion, but I don't  
14 think I'm going to have a lot of traction there when we get  
15 there. That -- I've been through that a couple of times too,  
16 Judge, so I know how that comes out.

17 It is my strong preference to seat alternates if we  
18 lose jurors. I think the law requires that the jury start over  
19 from scratch when alternates seated and for that -- and you  
20 have to remove the notes from the jury room and make them start  
21 over. Since that is what the law requires, I would suggest to  
22 the Court that it is most efficient to do the whole thing on  
23 Monday with two, if both are available. We can find that out  
24 today whether both are available. And, you know, because if  
25 you seat one today and we don't get a verdict today, then we're

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1 going to be in a situation where we have to start over again on  
2 Monday, and I think that would be too disruptive.

3 THE COURT: What would you say to excusing juror  
4 number five? I don't think there is any doubt that he has to  
5 be excused.

6 MR. RIOPELLE: There is good cause to excuse him, your  
7 Honor. I agree.

8 THE COURT: You agree with that, Mr. Agnifilo?

9 MR. AGNIFILO: I do agree based on the record.

10 MR. RIOPELLE: If he can't be available --

11 THE COURT: Proceeding with 11 and hoping to get a  
12 verdict today?

13 MR. RIOPELLE: I object to that.

14 MR. AGNIFILO: I object to it too, your Honor. I  
15 think a jury of 12 is --

16 MR. RIOPELLE: Preferable.

17 MR. AGNIFILO: -- important, and we have --

18 THE COURT: It's preferable, but it's not mandatory,  
19 right?

20 MR. RIOPELLE: I believe in this case with available  
21 alternates, it is mandatory. But that's --

22 THE COURT: I think there are alternatives.

23 MR. AGNIFILO: Just one other thing that -- I agree  
24 with everything that my co-counsel put on the record.

25 The other issue -- I think having them both come on

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1 Monday is good for the purposes of smoothness in the transition  
2 of the deliberations.

3 I also think it's a lot to ask of a juror who has no  
4 idea that we would be calling them today to summon them down  
5 today, that that --

6 THE COURT: I'm not thinking of that.

7 MR. AGNIFILO: I see. Okay.

8 THE COURT: I don't know what -- I don't even know if  
9 they're in town.

10 MR. AGNIFILO: Right.

11 MR. RIOPELLE: Right. He's going with 11.

12 THE COURT: Mr. Tehrani?

13 MR. TEHRANI: Your Honor, yeah. So I think it is  
14 certainly within your discretion to have them, to have them  
15 deliberate today with 11.

16 If there are two alternate jurors who are still  
17 available to begin deliberations on Monday, the government  
18 would propose that that be --

19 THE COURT: So all of you agree?

20 MR. RIOPELLE: That's correct, all of us prefer a jury  
21 of 12.

22 THE COURT: All right.

23 MR. TEHRANI: And --

24 THE COURT: A jury of 12 by calling the two alternate  
25 jurors --

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1 MR. RIOPELLE: Correct.

2 THE COURT: -- and summoning them on --

3 MR. RIOPELLE: On Monday.

4 THE COURT: -- Monday.

5 MR. RIOPELLE: Yes, Judge.

6 MR. TEHRANI: However, your Honor if one or both of  
7 them are not available to --

8 THE COURT: Well, what we have to find out next,  
9 Mr. Tehrani. So I haven't done that.

10 MR. RIOPELLE: Right.

11 THE COURT: So what do you propose we tell the jurors  
12 now, sitting in the room?

13 MR. RIOPELLE: Well, it depends on what -- it sounds  
14 like your Honor wants to go with 11 today over the objection of  
15 all parties.

16 THE COURT: No, I don't. I want to call -- while  
17 we're handling these administrative tasks.

18 Mr. Tehrani says if the jurors are not available  
19 because they're not available -- you know, you proposed a  
20 remedy that it's not possible.

21 MR. RIOPELLE: Correct. Yes, your Honor.

22 THE COURT: We got to verify they're still available  
23 to serve.

24 MR. RIOPELLE: Understood.

25 THE COURT: Do you have the contact information,

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1 Marlon?

2 THE DEPUTY CLERK: Yes, your Honor.

3 THE COURT: While we're doing this -- and I assume  
4 they're not hanging around waiting for us to phone them, you  
5 know, what do we tell the jury about their deliberations?

6 MR. RIOPELLE: I would propose that you tell the jury  
7 not to deliberate yet; that it appears that number five will  
8 not be available, and we'll be back to them very shortly as to  
9 how we intend to proceed.

10 Because that way -- you know, I think we'll know in 15  
11 minutes whether there is an alternate available today, and what  
12 we're going to do over the next couple of days. So we just  
13 have --

14 THE COURT: Even if an alternate were available today,  
15 in light of juror number four, I would not impanel the jurors  
16 until Monday.

17 MR. TEHRANI: Right, your Honor. But if there is not  
18 enough alternate jurors to seat 12 on Monday, then it would be  
19 appropriate, the Government's --

20 MR. RIOPELLE: Go with 11.

21 MR. TEHRANI: For them to deliberate today with just  
22 11.

23 THE COURT: Yes.

24 MR. TEHRANI: So I agree that perhaps if the jury  
25 needs to be told anything right now, they could be told that

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1 there is an issue, not to deliberate, and we're --

2 MR. RIOPELLE: Number five had a medical emergency,  
3 he's going to be excused, and we're determining how to proceed;  
4 please don't deliberate for the next 15 minutes or so while we  
5 determine how to proceed today.

6 THE COURT: Do you have the numbers for Ms. Schnuer  
7 and Mr. Peralta?

8 THE DEPUTY CLERK: Yes, your Honor.

9 THE COURT: Would you ask the CSO to bring in the  
10 jurors?

11 MR. RIOPELLE: Thank you, Judge.

12 THE COURT: Mr. Ovalles raises a question about juror  
13 number, alternate juror number two is Ms. Schnuer, alternate  
14 number three is Ms. Peralta, alternate number four is  
15 Ms. Gibbons. We've not heard from Ms. Schnuer or Miss Peralta.  
16 Ms. Gibbons did call and ask if there was a verdict.

17 Now, what would happen, what would you recommend if  
18 Ms. Schnuer doesn't answer the phone or is not available?

19 MR. RIOPELLE: She's the next in line?

20 THE COURT: She's alternate number two. She's one  
21 now, yeah. She was alternate number two.

22 MR. RIOPELLE: She's next in line.

23 THE COURT: Yeah, correct.

24 MR. RIOPELLE: I think we give her five minutes, call  
25 her back, and if she's not available, you move on.

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1                   MR. AGNIFILO: Could we do it -- just because we're  
2 making decisions about fundamental matters, can we just have  
3 five minutes just so we can speak to our clients just so we can  
4 say that we've done that? I think that would be helpful.

5                   THE COURT: All right.

6                   MR. AGNIFILO: Thank you, Judge.

7                   (Pause)

8                   MR. AGNIFILO: Your Honor, we're ready whenever the  
9 Court's ready.

10                  THE COURT: We're checking with the alternates.

11                  MR. AGNIFILO: Right.

12                  So what we discussed, and I think what we're in  
13 agreement on, is of the three alternates, whichever two respond  
14 that they're available; if two respond that they're available,  
15 it doesn't have to be number one. In other words, if we don't  
16 get in touch with number one, but we get in touch with two and  
17 three are and they're available, we don't have to --

18                  MR. RIOPELLE: Keep number one in reserve for the next  
19 problem.

20                  THE COURT: Okay.

21                  Another matter that perhaps I should ask the jury  
22 about would be, because we know about Ms. Kelly, is whether  
23 other jurors as it exists right now are available next week.  
24 We told them this is going to be a three week trial. Next week  
25 makes it four weeks. They can't stay forever.

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1                   MR. RIOPELLE: Yes, I don't remember anyone other than  
2 Ms. Kelly telling us.

3                   THE COURT: You tell them three weeks and now -- we  
4 told them it would be two to three weeks.

5                   MR. RIOPELLE: Yeah.

6                   THE COURT: And so they wouldn't, you know, in  
7 response to that they wouldn't bring up problems they're having  
8 in the fourth week. Ms. Kelly did.

9                   MR. RIOPELLE: Yeah.

10                  MR. AGNIFILO: Right.

11                  MR. RIOPELLE: That's true.

12                  MR. AGNIFILO: You're right, Judge. I think that's a  
13 very fair thing to do.

14                  My concern on a purely practical level is whether  
15 we're in -- whether if they're on the fence of being able to  
16 restructure their lives to stay or not whether they sort of err  
17 maybe on the side of their other obligations in their lives.

18                  THE COURT: I don't know if you have research  
19 capabilities here, but there is one case I find particularly  
20 compelling, United States of America against Saber.

21                  MR. AGNIFILO: What's the cite?

22                  THE COURT: 628 F. Supp., 2d, 414, decision by Judge  
23 Preska, our Chief Judge.

24                  MR. TEHRANI: Your Honor, what was the page number?

25                  THE COURT: 628, F. Supp., 2d, 414, decided in October

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1 of 2007.

2 MR. AGNIFILO: Which issue does that address, Judge?

3 THE COURT: Proceeding with 11 jurors under Rule 23,  
4 rather than impaneling alternate jurors, because if they were  
5 to impanel alternate jurors, they'd have to go over to another  
6 week.

7 MR. AGNIFILO: I see.

8 THE COURT: The situation that we have here.

9 MR. AGNIFILO: Right. I think I can look it up.

10 THE COURT: So. I have it right here so.

11 MR. AGNIFILO: Okay.

12 THE COURT: The key parts are highlighted for you, Mr.  
13 Agnifilo.

14 MR. AGNIFILO: That makes it easy for me, Judge.

15 Whenever I get article three highlights, I'll look at  
16 those first.

17 THE COURT: Yes. Maybe you can share it with Mr.  
18 Tehrani.

19 MR. AGNIFILO: I will do that. Thank you, Judge.

20 THE COURT: Marlon has been in touch with Ms. Schnuer  
21 and Ms. Peralta.

22 Marlon, could you report?

23 THE DEPUTY CLERK: Yes, your Honor. I spoke to Ms.  
24 Schnuer. She's at a meeting about three hours away from the  
25 city. In light of that meeting and the distance, she will not

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1 be able to come in today. Ms. Peralta -- but she will be  
2 available to resume or continue deliberations on Monday.

3 As far as Ms. Peralta, she's at work as well. She is  
4 not available to come in today, but she is available to resume  
5 deliberations or continue deliberations with the jury on Monday  
6 morning as well.

7 MR. AGNIFILO: Very good.

8 MR. RIOPELLE: I think we're confronted with a very  
9 interesting sort of gap in the rule.

10 If we deliberate today with 11, do we have to continue  
11 with those 11 next week and not seat the alternates, or do we  
12 adjourn for the day and seat the 12? In other words, I think  
13 the rule -- as I understand the rule, I believe it gives the  
14 Court the discretion to go ahead with 11 given that five has to  
15 go for good cause. I object to that, of course, because --

16 THE COURT: But you don't quarrel with the good cause.

17 MR. RIOPELLE: What is that?

18 THE COURT: You don't quarrel with the good cause?

19 MR. RIOPELLE: I do not. He says he has a medical  
20 emergency and he's not going to be here next week. If that's  
21 not good cause, I don't know what would be.

22 THE COURT: Okay.

23 MR. RIOPELLE: Okay.

24 THE COURT: What you object to is my exercising of the  
25 alternative presented in --

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1 MR. RIOPELLE: Correct.

2 THE COURT: -- Rule 23(b)(3).

3 MR. RIOPELLE: Correct.

4 THE COURT: And you say that I have to --

5 MR. RIOPELLE: Adjourn for the day and put the two  
6 alternates on.

7 THE COURT: I think you're wrong on that.

8 MR. RIOPELLE: Okay. And we disagree. But if you do  
9 go with 11 today, then I don't think we can call in the  
10 alternates back after that.

11 THE COURT: I agree with that.

12 MR. RIOPELLE: Okay. So we're even.

13 And then if we lose another one, then it is mistrial,  
14 unless I stipulate to ten. And good luck there, Judge.

15 THE COURT: Yeah, I don't -- I'm not counting on that,  
16 Mr. Riopelle.

17 MR. RIOPELLE: Don't count on my stipulation.

18 THE COURT: Mr. Agnifilo?

19 MR. AGNIFILO: Yes, Judge. Just so the record's  
20 clear, my strong preference is to discontinue further  
21 deliberations today; to resume on Monday with a full jury of 12  
22 with the two alternates who have now indicated that they're  
23 available.

24 I think that while there is certainly a certain amount  
25 of discretion built into the rule, I think we have specific

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1 facts before us here where we can have a jury of 12 as early as  
2 Monday in light of a situation that was unforeseeable to all of  
3 us here in court.

4 And while there would be a break in the jury  
5 deliberation for the balance of today, we would have a full  
6 jury of 12 on Monday, and that is my strong preference.

7 THE COURT: Mr. Tehrani?

8 MR. TEHRANI: Your Honor, I agree that certainly it's  
9 within your discretion to have the jury deliberate today with  
10 11.

11 I'm not sure that I necessarily agree that if that is  
12 the course that is chosen then, on Monday it would be  
13 inappropriate to bring in alternate.

14 THE COURT: I think -- I haven't done extensive  
15 research on this, Mr. Tehrani. I think once I've opted for a  
16 jury of 11, that's the jury.

17 MR. RIOPELLE: I think that's right.

18 MR. TEHRANI: Well, I'm not suggesting the jury go  
19 back to 12, but if --

20 THE COURT: I thought you were. I'm sorry.

21 MR. TEHRANI: If one of the 11 needs to be replaced;  
22 for example, we know on Monday we're going to lose one of the  
23 11. It doesn't -- it's not immediately obvious to me why we  
24 would not be able to replace that juror with an ultimate and  
25 proceed with 11 jurors at that time.

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1           I have not done research into this, so I will ask to  
2 do that before we --

3           MR. RIOPELLE: I can't say I've ever seen that done.  
4 I think --

5           THE COURT: Well, we've never encountered this  
6 situation.

7           MR. RIOPELLE: Yeah. I have had juries of 11. I  
8 haven't lost a juror then. But it's always been a sort of  
9 colloquial understanding that if you lose a juror after you go  
10 with 11, unless we stipulate to go with ten, that's a mistrial.  
11 That's the way I've always understood.

12           THE COURT: Mr. Tehrani?

13           MR. TEHRANI: Your Honor, again, I don't know the  
14 answer to this legally. Given the potential uncertainty --

15           MR. RIOPELLE: Yeah, no, we're really -- we're in  
16 uncharted water.

17           MR. TEHRANI: So, I mean given that we have the option  
18 of proceeding on Monday with 12 jurors, the government would  
19 certainly prefer to do that rather than go with 11 knowing that  
20 we're going to lose one of those on Monday, which basically  
21 gives us the rest of the day to reach a verdict, and  
22 potentially not be able to proceed -- although, again, the  
23 government does not concede that that is the alternative at  
24 that point.

25           THE COURT: So are we unanimous that the preferred

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1 course is, by both the government and the defendants, is to  
2 adjourn deliberations today, excuse jurors four and five, and  
3 replace them with alternates two and three, and resume  
4 deliberations -- not resume deliberations -- start  
5 deliberations --

6 MR. RIOPELLE: Anew on Monday.

7 THE COURT: -- anew on Monday?

8 MR. TEHRANI: Yes, your Honor.

9 MR. AGNIFILO: Yes, your Honor. That's our  
10 preference.

11 MR. RIOPELLE: That's my preference, your Honor  
12 recognizing that you have the right to go with 11 now.

13 THE COURT: Should we ask the jurors, any other jurors  
14 if -- jurors 12, three, six, and seven through 12, if they have  
15 plans for next week?

16 MR. RIOPELLE: I think that's wise, your Honor. We  
17 should know -- the more facts we know, the better decision  
18 we'll make.

19 MR. TEHRANI: Your Honor, I think we should not invite  
20 them to have -- I mean, they've been obviously very  
21 conscientious jury taking very this very seriously, and  
22 fulfilling their responsibility completely. I just don't think  
23 we should invite them to have conflicts for next week.

24 MR. RIOPELLE: They may have them, we don't know of  
25 yet. We should know what their situation is. For all I know,

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1 I'll decide we want to go with 11 if I hear three more jurors  
2 can't come on Monday. I don't know. We got to hear what the  
3 facts are. Right now I'm against 11.

4 THE COURT: Mr. Agnifilo?

5 MR. AGNIFILO: My position, with utmost respect to my  
6 co-counsel, is I agree with the government. I don't want to  
7 invite it.

8 THE COURT: All right.

9 Marlon, call in the jury.

10 THE DEPUTY CLERK: Yes, sir.

11 THE DEPUTY MARSHAL: All rise.

12 (Jury present at 10:15 a.m.)

13 THE COURT: Good morning. Please be seated.

14 As you can see, ladies and gentlemen, we're missing a  
15 juror, Mr. Pascetta, juror number five, has encountered a  
16 family medical emergency which precludes his attendance today,  
17 and conclude his attendance next week.

18 Therefore, after discussion with the parties, we've  
19 decided to call an alternate juror to replace Mr. Pascetta.  
20 And so I'm going to ask you to stop your deliberations now and  
21 resume on Monday.

22 Now, I know, Ms. Kelly, that may create a problem for  
23 you because you have business travel plans, is that correct?

24 MS. KELLY: Correct.

25 THE COURT: Okay. We're going to excuse you as well,

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1 and impanel two alternate jurors on Monday. And then you can  
2 start your -- you have to start your deliberations again, in  
3 order to reach a verdict.

4 So don't do any deliberation. We're going to excuse  
5 you now and ask you to come back on Monday, the 29th of  
6 September. We'll have Ms. Schnuer and Ms. Peralta, alternate  
7 jurors number two and three, will join you.

8 Ms. Samuels?

9 MS. SAMUELS: Sorry. I'm also leaving next week  
10 Thursday night on a trip as well.

11 THE COURT: Next Thursday night?

12 MS. SAMUELS: Yes.

13 THE COURT: Well, if you're not leaving on Monday, I'm  
14 going to ask you --

15 MS. SAMUELS: Yes.

16 THE COURT: -- Ms. Samuels, to come back on Monday.

17 MS. SAMUELS: Right.

18 THE COURT: All right. Is there anything else we have  
19 to take up?

20 MR. AGNIFILO: Nothing else, Judge.

21 THE COURT: All right, you're excused and resume on  
22 Monday at 9:30. Remember don't discuss the case.

23 Ms. Kelly, thank you very much for your conscientious  
24 service. We appreciate it.

25 MS. KELLY: Thank you.

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1                   THE COURT: You're discharged.

2                   (In open court; jury not present)

3                   THE COURT: Okay.

4                   Now, I'll take guidance from the parties on what you  
5 want me to say to jurors number four and five when they're  
6 impaneled on Monday, what we tell the jury.

7                   MR. RIOPELLE: I think you have to, as I understand  
8 the law --

9                   THE COURT: I don't want this ad libitum, Mr.  
10 Riopelle. I'd like it in writing.

11                  MR. RIOPELLE: Very good, your Honor.

12                  THE COURT: Like a request to charge.

13                  MR. RIOPELLE: Very good.

14                  THE COURT: So we have your views and the government's  
15 views.

16                  MR. TEHRANI: Yes, your Honor.

17                  MR. RIOPELLE: And I do think the law requires that  
18 the jurors return any notes they have relating to their  
19 deliberations, any sheets that where they have partial notes,  
20 things like that. They really are required to start anew. And  
21 the law, the cases -- I've had this once before -- require that  
22 the jury room essentially be cleaned out and sanitized, so to  
23 speak, so they truly do start anew.

24                  THE COURT: Well, if you give me that in writing, I'd  
25 appreciate it.

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1                   MR. RIOPELLE: I will do. I'll go find those cases,  
2 Judge.

3                   MR. AGNIFILO: I'm going to return your case to you,  
4 your Honor. Thank you.

5                   THE COURT: Thank you.

6                   MR. RIOPELLE: Thank you, Judge.

7                   THE COURT: Anything else?

8                   MR. RIOPELLE: No, sir. Thank you.

9                   MR. AGNIFILO: Thank you.

10                  THE COURT: I'm surprised that nobody wanted to opt  
11 for a jury of 11, try to get a verdict today.

12                  MR. RIOPELLE: You know, a defendant's always trying  
13 for a mistrial, Judge, in my own defense.

14                  THE COURT: Okay. Thank you very much.

15                  MR. RIOPELLE: Thank you, Judge.

16                  MR. AGNIFILO: Thank you, Judge.

17                  THE COURT: Hope everybody has a nice weekend.

18                  MR. AGNIFILO: Thank you. You too, your Honor.

19                  MR. RIOPELLE: Thank you, Judge.

20                  (Adjourned to September 29th, 2014 at 9:30 a.m.)

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